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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION THREE

KAREN BURDICK,

Plaintiff and Respondent,

v.

KEVIN HARLAN,

Defendant and Appellant.

A134802

(Mendocino County
Super. Ct. No. 1159349)

Defendant and appellant Kevin Harlan appeals the trial court's restraining order issued against him and in favor of plaintiff and respondent Karen Burdick. We affirm.

FACTUAL AND PROCEDURAL BACKGROUND

Two warring factions of the same family are currently embroiled in a dispute over the partition of a parcel of real property (property) in Covelo, Mendocino County. Multiple family members claim an interest in the property and several structures have been erected or installed on it. The dispute is in the hands of the Bureau of Indian Affairs (BIA) and will be resolved by the BIA in due course. At times relevant here, feelings were running high and there was animosity between the parties; indeed, in the course of ruling on the injunction at issue here, the trial court pointedly appealed for calm until the dispute is resolved.

This legal matter was initiated on November 28, 2011, when Karen Burdick filed a Judicial Council form CH-100, Request for Orders to Stop Harassment (request) pursuant

to section 527.6 of the Code of Civil Procedure,¹ seeking orders enjoining Kevin Harlan from harassing Burdick and members of her family and that he stay away from Burdick's home. In the declaration submitted with her request, Burdick alleged Harlan prowled around her house late at night, threatened in a foul-mouthed manner to kick her ass, made offensive gestures towards her sister and insulted her son in an attempt to provoke a physical confrontation. Kevin Harlan is Karen Burdick's brother's son-in-law, and he is in the process of building an extension to his in-laws' residence, which is located 60 feet away from Burdick's house.

The trial court held a hearing on Burdick's request on November 30, 2011. After hearing testimony from Burdick and Harlan, the court issued a temporary restraining order (TRO) requiring Harlan to stay 25 feet away from Burdick's residence and to have no contact with either Burdick or her relatives, Audrey Hernandez and Lois Horne. However, the TRO expressly allowed Harlan to continue working on his in-laws' house. Harlan stated he had no weapons and agreed to sign a statement to that effect. The court set the matter for a further hearing regarding an extended injunction on December 29, 2011.

At the December 29 hearing, Burdick appeared with counsel and Harlan appeared in propria persona. The court heard testimony from Lois Horne, Burdick's older sister, who owns and lives in a trailer situated about 50 feet away from Burdick's residence, Tammy Lynn Whittle, Burdick's daughter, and Karen Burdick, who all testified about an incident on November 6 when Harlan threatened to "kick all your fucking pussy asses." Karen Burdick also testified about other instances of Harlan's threatening or harassing behavior towards her and members of her family; specifically, Burdick described one incident where Harlan pulled down three fence posts she had installed. Harlan took the witness stand in his own defense. Harlan testified that the fence posts he pulled down

¹ Further statutory references are to the Code of Civil Procedure unless otherwise noted.

were “driven through my lumber.” He denied “cussing directly at anyone,” stating, “I’m only building a house” and, “we haven’t done anything wrong.”

Following the presentation of evidence, the court stated: “I’ve heard a lot of evidence about this controversy and I don’t believe the controversy is ever going to be fully resolved until the [BIA] acts and the property issues are sorted out. [¶] . . . [¶] Based on the evidence I’ve heard today, . . . I am going to find . . . by the applicable standard, that a restraining order against Mr. Harlan and in favor of Miss Burdick is appropriate.” Thereafter, the court issued an injunction pursuant to section 527.6, with an expiration date of December 28, 2014, ordering Harlan to stay at least 25 feet away from Burdick and specified family members. Harlan filed a timely notice of appeal on February 27, 2012.

DISCUSSION

A. Motion to Dismiss Appeal

Preliminarily, we address plaintiff and respondent Karen Burdick’s motion, filed in this court on June 4, 2012,² pursuant to section 907 and rule 8.54(a) of the California Rules of Court, to summarily dismiss Harlan’s appeal and impose appellate sanctions for filing a frivolous appeal and violating rule 8.204 of the California Rules of Court. Specifically, Burdick asserts dismissal is warranted because (1) Harlan failed to comply with rule 8.204 by failing to cite to specific portions of the record as factual references; (2) Harlan failed to include a Certificate of Interested Persons, in violation of rule 8.208³; (3) Harlan “is not truly an aggrieved party entitled to judicial review on appeal;” and (4) Harlan is pursuing the appeal for the improper purposes of gaining leverage in a criminal case pending against Harlan for assaulting Burdick’s daughter subsequent to issuance of the injunction, and perpetuating his “campaign of terror against respondent”

² On July 12, 2012, we issued an order deferring consideration of respondent’s motion pending our review of the merits of the appeal.

³ Rule 8.208 is intended to “provide justices of the Courts of Appeal with additional information to help them determine whether to disqualify themselves from a proceeding.” (Rule 8.208(a).)

and her family. For reasons explained below, we deny Burdick’s motion to dismiss the appeal and request for appellate sanctions.

First, Harlan’s brief complies with rule 8.204 in substantial part; it contains a Table of Contents, Table of Authorities, and separate statements of the case, appealability and the facts. (See rule 8.204(a) (describing format and contents).) True, Harlan fails to provide citations to the record in his statement of facts and argument sections. (See rule 8.204(a)(1)(C) [brief must “[s]upport any reference to a matter in the record by a citation to the volume and page number of the record where the matter appears].) Under rule 8.204, however, this failure does not warrant dismissal of the appeal; rather rule 8.204 provides that if a non-complying brief has been filed, we may disregard the noncompliance. (See Cal. Rules of Court, rule 8.204(e)(2)(C).) Given the brevity of the record, the straightforward legal issue presented, and appellant’s in propria persona status, we shall disregard any noncompliance in this instance.⁴

Other grounds asserted by Burdick for summary dismissal are without merit. In this regard, it cannot be said Harlan “is not truly an aggrieved party entitled to judicial review on appeal,” as asserted by Burdick. As the court explained to Harlan, while the injunction remains in force he cannot possess firearms and is subject to both criminal and civil penalties for any violation of the injunction. Moreover, Burdick’s assertions concerning Harlan’s purpose in pursuing this appeal are both speculative and based on matters outside the record. In sum, Burdick’s motion to summarily dismiss the appeal and impose appellate sanctions is denied.

⁴ Likewise, Harlan’s failure to file a certificate of interested parties under rule 8.208 does not warrant summary dismissal of the appeal. Rather, rule 8.208 provides that the reviewing court *may* dismiss the appeal, but only if the clerk first notifies the party by mail that the party must file the certificate within 15 days after the clerk’s notice is mailed and the party fails to comply with the 15-day notice. (See rule 8.208(d)(3).) Again, we decline to dismiss the appeal for Harlan’s failure to file a certificate of interested parties.

B. Merits

Turning to the merits of the appeal, Harlan's sole contention is that the trial court erred by issuing a permanent restraining order against him and in favor of Burdick. We disagree.

Section 527.6 establishes a procedure for expedited injunctive relief to persons suffering harassment. (*Schraer v. Berkeley Property Owners' Assn.* (1989) 207 Cal.App.3d 719, 730.) A temporary restraining order may be obtained, with or without notice, upon an affidavit showing reasonable proof of harassment and that great or irreparable harm would result to the plaintiff. (§ 527.6, subd. (c).) The temporary restraining order generally lasts for not more than 21 or 25 days, within which time a hearing must be held on the petition for a permanent injunction. (§ 527.6, subd. (f).) The injunction shall issue, for a term of not more than three years, if the judge finds unlawful harassment by clear and convincing evidence. (§ 527.6, subd. (j)(1).)

"Harassment" is defined as "unlawful violence, a credible threat of violence, or a knowing and willful course of conduct directed at a specific person that seriously alarms, annoys, or harasses the person, and that serves no legitimate purpose. The course of conduct must be such as would cause a reasonable person to suffer substantial emotional distress, and must actually cause substantial emotional distress to the [plaintiff]."

(§ 527.6, subd. (b)(3).) " 'Credible threat of violence' is a knowing and willful statement or course of conduct that would place a reasonable person in fear for his or her safety, or the safety of his or her immediate family, and that serves no legitimate purpose."

(§ 527.6, subd. (b)(2).) " 'Course of conduct' is a pattern of conduct composed of a series of acts over a period of time, however short, evidencing a continuity of purpose, including following or stalking an individual, making harassing telephone calls to an individual, or sending harassing correspondence to an individual by any means, including, but not limited to, the use of public or private mails, interoffice mail, fax, or computer e-mail. Constitutionally protected activity is not included within the meaning of 'course of conduct.' " (§ 527.6, subd. (b)(1).)

We review the issuance of an injunction under section 527.6 for substantial evidence. (*Schild v. Rubin* (1991) 232 Cal.App.3d 755, 762.) “We resolve all factual conflicts and questions of credibility in favor of the prevailing party and indulge in all legitimate and reasonable inferences to uphold the finding of the trial court if it is supported by substantial evidence which is reasonable, credible and of solid value. [Citations.]” (*Ibid.*)

Here, the evidence presented at the December 2011 hearing on the permanent injunction was as follows: Lois Horne testified she was visiting her sister, plaintiff Karen Burdick, on November 6, 2011. Around 9:00 p.m., she and Burdick heard a noise outside and when they opened the door they saw Kevin Harlan standing in Burdick’s yard. Harlan started swearing at them, and then shouted, “I’m going to kick your effin pussy asses.” Horne testified she is afraid of Harlan because he makes rude gestures at her every time he sees her and appears to her to be of “unstable mind” because of such actions. Tammy Whipple testified she too was present at her mother Karen Burdick’s home on November 6, 2011. Whipple heard Harlan call to her mother that “he was going to kick our fucking pussy asses.” Whipple testified she is afraid of Harlan, stating, “What he could do, I don’t know.”

Karen Burdick testified about another incident on November 26, 2011 in which Harlan threatened Burdick’s sister Audrey’s grandson, Sam Rabano; Harlan called Rabano a bitch and said he was going to “fucking bash [Robano’s] head in.” Audrey reported this incident to the Sheriff’s Office. On November 27, 2011, Burdick heard Harlan threaten her son; Harlan told her son he was a “cunt.” Burdick testified Harlan’s threatening behavior began in 2009, when Burdick and her husband Greg started building a home on the property; at that time, Harlan threatened her husband Greg that he was going to “fucking kick his ass.” Also, around Easter 2011, Harlan destroyed some iron fence posts Burdick installed by bending them to the ground. Burdick testified she is concerned for the safety of herself and her family because of Harlan; Burdick was born and raised in Covello and stated that Harlan has a reputation in Covello “that’s not a

clean reputation, that he has been in trouble with rifles and drugs” and “can be pretty violent when he’s mad.”

We conclude the testimony adduced above provides substantial evidence of a willful course of conduct by Harlan directed at Burdick and members of her family that served no legitimate purpose other than to seriously alarm those targeted by Harlan’s threatening and intimidating behavior. Accordingly, the trial court’s order imposing the injunction must be affirmed. (See *Schild v. Rubin*, *supra*, 232 Cal.App.3d at p. 762 [issuance of an injunction under section 527.6 is reviewed for substantial evidence].)

DISPOSITION

The trial court’s restraining order is affirmed. Appellant shall bear costs on appeal.

Jenkins, J.

We concur:

McGuiness, P. J.

Siggins, J.